Supreme Court, U.S.
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No:

In the
Supreme Court of the United States

JORGE M. BELTRAN,

Petitioner,

vs.

U.S. ATTORNEY GENERAL,

Respondent.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED FOR REVIEW

Should a writ of certiorari be granted to review whether the Eleventh Circuit Court of Appeals, the Board of Immigration Appeals and the Immigration Judge should have granted the petition for asylum in light of well documented incidents of possible torture and Petitioner's inability to relocate in his native country.

PARTIES TO THE PROCEEDINGS
IN THE COURT BELOW

In addition to the parties named in the caption of the case, the following individuals were parties to the case. The United States Court of Appeal for the Eleventh Circuit, the Honorable Michael C. Horn, Immigration Judge, Thomas Snow, Panel Member, Board of Immigration Appeals, Nicolas Olano, Esquire, Michael Hertz, Acting Assistant Attorney General Civil Division and Jessica Sherman, U.S. Department of Justice.

None of the parties is a company, corporation, or subsidiary of any company or corporation.

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ON PETITION FOR WRIT OF CERTIORARI
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PETITION FOR WRIT OF CERTIORARI

Jose M. Beltran, the Petitioner herein, respectfully prays that a Writ of Certiorari be issued to review the judgment of the United States Court of Appeals for the Eleventh Circuit, entered in the above entitled cause.

OPINION BELOW

The opinion of the Court of Appeals for the Eleventh Circuit, whose judgment is herein sought to be reviewed, is an unpublished opinion *Beltran v. Mukasey, Attorney General,* 2009 WL 1845580 (C.A.11, June 29, 2009)) is

dated June 29, 2009 and is reprinted as Appendix A to this Petition.

The Order Board of Immigration Appeals entered in *Matter of Jose M. Beltran,* under File No: A96-101-139/140/141/142, entered on September 26, 2008 is reprinted as Appendix B to this Petition.

The Written Opinion of the Immigration Judge entered in the *Matter of Jose M. Beltran, et. al.,* under File No: A96-101-139/140/141/142, entered on June19, 2007 is reprinted as Appendix C to this Petition.

The Order of the Immigration Judge in the *Matter of Jose M. Beltran, et. al.,* under File No: A96-101-139/140/141/142, entered on June 27, 2009 and is reprinted as Appendix D to this Petition.

STATEMENT OF JURISDICTION

The Judgment of the Court of Appeals was entered on June 29, 2009.

The Jurisdiction of this Court is invoked pursuant to Title 28 U.S.C. § 1254(1).

CONSTITUTIONAL PROVISIONS, TREATIES, STATUTES AND RULES INVOLVED

Title 8 U.S.C. § 1158 (a)(2)(B) of the Immigration and Nationality Act, provides in pertinent part:

(a) Authority to apply for asylum

(1) In general

Any alien who is physically present in the United States or who arrives in the United States (whether or not at a designated port of arrival and including an alien who is brought to the United States after having been interdicted in international or United States waters), irrespective of such alien's status, may apply for asylum in accordance with this section or, where applicable, section 1225(b) of this title.

(2) Exceptions

(A) Safe third country

Paragraph (1) shall not apply to an alien if the Attorney General determines that the alien may be removed, pursuant to a bilateral or multilateral agreement, to a country (other than the country of the alien's nationality or, in the case of an alien having no nationality, the country of the alien's last habitual residence) in which the alien's life or freedom would not be threatened on account of race, religion, nationality, membership in a particular social group, or political opinion, and where the alien would have access to a full and fair procedure for determining a claim to asylum or equivalent temporary protection, unless the Attorney General finds that it is in the public interest for the alien to receive asylum in the United States.

(B) Time limit

Subject to subparagraph (D), paragraph (1) shall not apply to an alien unless the alien demonstrates by clear and convincing evidence that the application has

been filed within 1 year after the date of the alien's arrival in the United States.

Id. Title 8 U.S.C. § 1158 (a)(2)(B)

The Convention Against Torture (CAT), 8 C.F.R. 208.16 provides in pertinent part:

§ 208.16 Withholding of removal under section 241(b)(3)(B) of the Act and withholding of removal under the Convention Against Torture.

(a) Consideration of application for withholding of removal. An asylum officer shall not decide whether the exclusion, deportation, or removal of an alien to a country where the alien's life or freedom would be threatened must be withheld, except in the case of an alien who is otherwise eligible for asylum but is precluded from being granted such status due solely to section 207(a)(5) of the Act. In exclusion, deportation, or removal proceedings, an immigration judge may adjudicate both an asylum claim and a request for withholding of removal whether or not asylum is granted.

(b) Eligibility for withholding of removal under section 241(b)(3) of the Act; burden of proof. The burden of proof is on the applicant for withholding of removal under section 241(b)(3) of the Act to establish that his or her life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a

particular social group, or political opinion. The testimony of the applicant, if credible, may be sufficient to sustain the burden of proof without corroboration. The evidence shall be evaluated as follows:

(1) Past threat to life or freedom.

(i) If the applicant is determined to have suffered past persecution in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion, it shall be presumed that the applicant's life or freedom would be threatened in the future in the country of removal on the basis of the original claim. This presumption may be rebutted if an asylum officer or immigration judge finds by a preponderance of the evidence:

(A) There has been a fundamental change in circumstances such that the applicant's life or freedom would not be threatened on account of any of the five grounds mentioned in this paragraph upon the applicant's removal to that country; or

(B) The applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so.

(ii) In cases in which the applicant has established past persecution, the Service shall bear the burden of

establishing by a preponderance of the evidence the requirements of paragraphs (b)(1)(i)(A) or (b)(1)(i)(B) of this section.

(iii) If the applicant's fear of future threat to life or freedom is unrelated to the past persecution, the applicant bears the burden of establishing that it is more likely than not that he or she would suffer such harm.

(2) Future threat to life or freedom. An applicant who has not suffered past persecution may demonstrate that his or her life or freedom would be threatened in the future in a country if he or she can establish that it is more likely than not that he or she would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country. Such an applicant cannot demonstrate that his or her life or freedom would be threatened if the asylum officer or immigration judge finds that the applicant could avoid a future threat to his or her life or freedom by relocating to another part of the proposed country of removal and, under all the circumstances, it would be reasonable to expect the applicant to do so. In evaluating whether it is more likely than not that the applicant's life or freedom would be threatened in a particular country on account of race, religion, nationality, membership in a particular social group, or political opinion, the asylum officer or immigration judge shall not require the applicant to provide evidence that he or she would be singled out individually for such persecution if:

(i) The applicant establishes that in that country there is a pattern or practice of persecution of a group of persons similarly situated to the applicant on account of race, religion, nationality, membership in a particular social group, or political opinion; and

(ii) The applicant establishes his or her own inclusion in and identification with such group of persons such that it is more likely than not that his or her life or freedom would be threatened upon return to that country.

(3) Reasonableness of internal relocation. For purposes of determinations under paragraphs (b)(1) and (b)(2) of this section, adjudicators should consider, among other things, whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country; administrative, economic, or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. These factors may or may not be relevant, depending on all the circumstances of the case, and are not necessarily determinative of whether it would be reasonable for the applicant to relocate.

(i) In cases in which the applicant has not established past persecution, the applicant shall bear the burden of establishing that it would not be reasonable for him or her to relocate, unless the persecutor is a government or is government-sponsored.

(ii) In cases in which the persecutor is a government or is government-sponsored, or the applicant has established persecution in the past, it shall be presumed that internal relocation would not be reasonable, unless the Service establishes by a preponderance of the evidence that under all the circumstances it would be reasonable for the applicant to relocate.

(c) Eligibility for withholding of removal under the Convention Against Torture.

(1) For purposes of regulations under Title II of the Act, "Convention Against Torture" shall refer to the United Nations Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, subject to any reservations, understandings, declarations, and provisos contained in the United States Senate resolution of ratification of the Convention, as implemented by section 2242 of the Foreign Affairs Reform and Restructuring Act of 1998 (Pub.L. 105-277, 112 Stat. 2681, 2681-821). The definition of torture contained in § 208.18(a) of this part shall govern all decisions made under regulations under Title II of the Act about the applicability of Article 3 of the Convention Against Torture.

Id. 8 C.F.R. 208.16

STATEMENT OF THE CASE

Mr. Beltran, Mrs. Belalcazar, and their children are natives and citizens of Colombia who entered the United States at Miami, Florida, on September 10, 2000, as non-immigrant visitors for pleasure. Mr. Beltran filed an affirmative asylum application with former Immigration and Naturalization Service ("INS") -- now, Department of Homeland Security ("DHS")[1] – on October 17, 2002.[2] A.R. 139-49.

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[1] On March 1, 2003, the functions of the 2 former INS were transferred from the Department of Justice to three distinct agencies (United States Immigration and Customs Enforcement, United States Customs and Border Protection, and United States Citizenship and Immigration Services) in the newly formed Department of Homeland Security. See Homeland Security Act of 2002, Pub. L. No. 107-296,116 Stat. 2135 (Nov. 25, 2002). An alien who is not in immigration proceedings may file an asylum application with the DHS. 8 C.F.R. §§ 208.4(b)(1)-(2). The "affirmative" application is adjudicated by a trained asylum officer in a non-adversarial interview. 8 C.F.R. § 208.9. See *Ramos v. INS,* 246 F.3d 1264, 1266 (9th Cir. 2001). In 2006, DHS granted more than 12,800 applications. See DHS Annual Flow Report: Refugees and Asylees: 2006, Table 7, http://www.dhs.gov/ximgtn/statistics/publications/yearbook.shtm.

[2] As of June 2006, DHS's grant rate was 32%. If DHS declines to grant the application, and the applicant is not in valid status, the case is referred to the Executive Office for Immigration Review ("EOIR") in the Department of Justice. 8 C.F.R. §§ 208.14(c)(1), 208.19. At EOIR the alien receives a *de novo* hearing before an immigration judge. 8 C.F.R. §§ 1208.13, 1240.1(a)(1)(ii), 1240.11(c). The alien also has an opportunity to appeal an adverse decision to the Board. 8 C.F.R. § 1240.15. In 2007, EOIR granted 51% of the applications that were referred by DHS (affirmative applications). See U.S. Dep't of Justice, EOIR, FY 2007 Statistical Yearbook, p.A-1 (FY 2007 Highlights), http://www.usdoj.gov/eoir/statspub/fy07syb.pdf.

Thereafter, on March 4, 2005, removal proceedings were instituted against Petitioners with the filing of Notices to Appear ("NTA") with the immigration court, charging them with removability, under Section 237(a)(1)(B) of the Immigration and Nationality Act ("INA" or "Act"), 8 U.S.C. § 1227(a)(1)(B), as aliens who remained in the United States for a period longer than permitted. A.R. 175-76, 183-84, 191-92, 199-200.

Petitioners appeared before an immigration judge on November 17, 2005, and through counsel, admitted the allegations in the NTAs and conceded their removability as charged. A.R. 61. On June 19, 2007, after a hearing on the merits of the claims, the immigration judge rendered a decision, denying Mr. Beltran's applications for asylum, withholding of removal, and protection under the Torture Convention. A.R. 37-48. Petitioners filed a timely appeal with the Board. A.R. 6-22, 29-32. On September 26, 2008, the Board affirmed the immigration judge's denial of Mr. Beltran's applications relief and protection from removal and dismissed the appeal.

A subsequent appeal ensued to the Eleventh Circuit Court Appeals, who June 29, 2009 denied the petition. *See, Beltran v. Mukasey, Attorney General,* 2009 WL 1845580 (C.A.11, June 29, 2009)

REASONS FOR GRANTING THE WRIT

THIS COURT SHOULD ISSUE A WRIT OF CERTIORARI BECAUSE THE UNITED STATES COURT OF APPEALS FOR THE ELEVENTH CIRCUIT AND THE BOARD OF IMMIGRATION APPEALS HAVE INTERPRETED A FEDERAL STATUTES IN A WAY THAT CONFLICTS WITH APPLICABLE DECISIONS OF THIS COURT

Supreme Court Rule 10 provides in relevant part as follows:

Rule 10
CONSIDERATIONS GOVERNING REVIEW ON WRIT OF CERTIORARI

> (1) A review on writ of certiorari is not a matter of right, but of judicial discretion. A petition for a writ of certiorari will be granted only when there are special and important reasons therefore. The following, while neither controlling nor fully measuring the Court's discretion, indicate the character of reasons that will be considered:
>
> > (a)When a United States court of appeals has rendered a decision in conflict with the decision of another United States Court of Appeals on the same matter; or has decided a federal question in a way in conflict with a state court of last

> resort; or has so far departed from the accepted and usual course of judicial proceedings, or sanctioned such a departure by a lower court, as to call for an exercise of this Court's power of supervision.
>
> (b)When a ... United States court of appeals has decided an important question of federal law which has not been, but should be, settled by this Court, or has decided a federal question in a way that conflicts with applicable decision of this Court.... *Id.*

Id. Supreme Court Rule 10.1(a), (c)

QUESTIONS PRESENTED

SHOULD A WRIT OF CERTIORARI BE GRANTED TO REVIEW WHETHER THE ELEVENTH CIRCUIT COURT OF APPEALS, THE BOARD OF IMMIGRATION APPEALS AND THE IMMIGRATION JUDGE SHOULD HAVE GRANTED THE PETITION FOR ASYLUM IN LIGHT OF WELL DOCUMENTED INCIDENTS OF POSSIBLE TORTURE AND PETITIONER'S INABILITY TO RELOCATE IN HIS NATIVE COUNTRY

During the removal proceedings before the Immigration Judge, Mr. Beltran testified that he is married with two children. A.R. 71-72. He stated that he entered the United States with his wife and two children on September 10, 2000. A.R. 72. He testified that he and his family lived in El Saladito, Colombia, from 1996 until 2000, and that they lived in Cali, Colombia, prior coming to the United States. A.R. 73.

Mr. Beltran was involved with the Conservative Party in the Saladito neighborhood where he used to live in Colombia. A.R. 75. Mr. Beltran asserted that through his efforts with the Conservative Party, he taught people to write. A.R. 75-76. He stated that he began teaching in 1997, and that the lessons took place in the social room of the community center. A.R. 76. Mr. Beltran indicated that he was active in the campaigns for Maiseal Pastrana and Rodrigo Lloreda. A.R. 80. Mr. Beltran claimed that he personally knew Rodrigo Lloreda and started a reading and writing program for the people who worked on Rodrigo Lloreda's farms. A.R. 82. Mr. Beltran asserted that during the elections he organized an information table on behalf of

the Conservative Party and provided flyers about where and when to vote. A.R. 79, 82.

He claimed that he also informed people about the Conservative Party's campaign platforms, such as paving some of the highways. *Id.* Mr. Beltran stated that he decided to leave Colombia between 1998 and 1999, when the National Liberation Army ("ELN") started to take over certain regions in Colombia. A.R. 83. Mr. Beltran claimed that in June 2000, the ELN gave one of his ex-students, Jaime Garavito, a flyer stating that the ELN had decided to kidnap or kill anyone belonging to the Conservative Party in the region. A.R. 83-84. He indicated that the lower part of the flyer had a handwritten note specifically threatening him. A.R. 91. Mr. Beltran testified that after receiving the flyer, he and his family decided to hide in Cali, Colombia, in June or July 2000. A.R. 85-86. Mr. Beltran claimed that the day after he moved to Cali, an unknown caller, who he believed to be part of ELN, called him to threaten him. A.R. 86.

He asserted that he also received a call at his administrating office. A.R. 87. Mr. Beltran testified that he changed his phone numbers and started sleeping at friends' houses. *Id.* Mr. Beltran was never physically harmed by the ELN. *Id.* He reported the threats to the government attorney's office at the end of August 2000, but that he was already in the United States when the police followed up on the report. A.R. 87-88.

At the conclusion of the June 19, 2007 merits hearing, the immigration judge issued an oral decision. A.R. 37-48. (Appendix C) At the outset of his decision, the immigration judge observed that Mr. Beltran failed to file his asylum application within one year of his arrival in the United States, in that he entered the United States on September

10, 2000, but waited until October 17, 2002, to file his asylum application. A.R. 39.

Further, the immigration judge determined that even if the death of Mr. Beltran's father on April 26, 2001, excused Mr. Betran's delayed filing of his asylum application, Mr. Beltran failed to file his asylum application within a reasonable time after the death of his father. A.R. 40. In addition, the immigration judge determined that Mr. Beltran's lack of knowledge about asylum law did not excuse the untimely filing of his asylum application. *Id.*

Accordingly, the immigration judge concluded that Mr. Beltran was statutorily ineligible for asylum. *Id.* Turning to Mr. Beltran's application for withholding of removal, the immigration judge found that Mr. Beltran failed to demonstrate his eligibility for such relief based on his membership in the Conservative Party because he failed to demonstrate past persecution or a clear probability of future persecution on that basis. A.R. 44-48. Specifically, the immigration judge determined that Mr. Beltran's past experiences in Colombia constituted harassment, not persecution. A.R. 46 (citing *Silva v. U.S. Att'y Gen.*, 401 F.3d 1226 (11th Cir. 2005). Further, the immigration judge found that Mr. Beltran failed to show a clear probability of future persecution where he had been outside of Colombia for over six years and failed to establish that the ELN would still be interested in harming him. A.R. 47.

With regard to Mr. Beltran's application for CAT protection, the immigration judge found that Petitioners failed to show that they would be harmed by the Colombian government or with the acquiescence of the Colombian government. A.R. 47. Thus, the immigration judge concluded that Mr. Beltran failed to demonstrate eligibility for CAT protection. *Id.*

On September 26, 2008, the Board dismissed Petitioners' appeal of the immigration judge's decision. A.R. 2-3. The Board agreed with the immigration judge's conclusion that Mr. Beltran was ineligible for asylum because he failed to file his asylum application within one year of his arrival in the United States. A.R. 2. The Board also agreed that Mr. Beltran failed to demonstrate change or extraordinary circumstances to excuse his delayed filing. *Id.* Further, the Board agreed that Mr. Beltran failed to establish past persecution, emphasizing that Mr. Beltran only received a threatening letter and that he and his family were never physically harmed. A.R. 2-3. The Board pointed out that Mr. Beltran allegedly received the threatening letter via a former student, and thus, if the ELN wished to harm Mr. Beltran, they could have discovered his location from the former student and harmed him prior to his departure from Colombia. A.R. 3.

The Board also agreed that Mr. Beltran failed to demonstrate a well-founded fear of future persecution or torture. *Id.* The Board emphasized that Petitioner had been gone from Colombia for more than eight years and did not set forth any evidence demonstrating that Mr. Beltran is still active with the Conservative Party or had conducted himself in such a way to draw attention from the ELN in Colombia. *Id.* Accordingly, the Board agreed that Mr. Beltran failed to establish eligibility for withholding of removal. *Id.* In addition, the Board agreed that Mr. Beltran failed to demonstrate that the Colombian government would torture him or acquiesce in his torture. *Id.*

An alien is entitled to withholding of removal under the INA if he can show that it is more likely than not his "life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality,

membership in a particular social group, or political opinion." 8 C.F.R. § 1208.16(b); 8 U.S.C. § 1231(b)(3)(A); *Tan v. United States Att'y Gen.*, 446 F.3d 1369, 1375 (11th Cir. 2006); see also *INS v. Stevic*, 467 U.S. 407 (1987).

In this case, the Eleventh Circuit failed to consider that "life or freedom would be threatened in the proposed country of removal on account of race, religion, nationality, membership in a particular social group, or political opinion." *Id.* Specifically, that the ELN had threatened Petitioner with retaliation due to his involvement in the elections he organized on behalf of the Conservative Party. The standard is clear. To qualify for withholding of removal, an applicant must demonstrate a *"clear probability of persecution."* *Stevic*, 467 U.S. at 413. An alien can meet his burden of proof in either of two ways: (1) by showing past persecution in his country that was motivated, at least in part, by a protected ground, in which case a rebuttable presumption is created that his life or freedom would be threatened if he returned to his country or (2) by showing that it is more likely than not that he would be persecuted in the future on account of a protected ground. *See, Tan v. U.S. Att'y Gen.*, 446 F.3d 1369, 1375 (11th Cir. 2006)

The Eleventh Circuit failed to consider that Petitioner had satisfied his burden of proof by establishing "past persecution in [his] country based on a protected ground." *Mendoza v. U.S. Att'y Gen.*, 327 F.3d 1283, 1287 (11th Cir.2003). Once Petitioner shows that the persecution was, at least in part, motivated by a protected ground, then the Petitioner established eligibility for withholding of removal. *Borja v. INS*, 175 F.3d 732, 735-36 (9th Cir.1999) (en banc); *see Osorio v. INS*, 18 F.3d 1017, 1028 (2nd Cir.1994)(stating that persecution "does not mean

persecution *solely* on account of" a statutorily protected ground); *see also Sanchez v. U.S. Att'y Gen.*, 392 F.3d 434, 438 (11th Cir.2004) (citing *Grava v. INS*, 205 F.3d 1177, 1181 n. 3 (9th Cir.2000)(with approval for the proposition that "mixed-motive persecution may qualify" as persecution based on a protected ground). If a Petitioner establishes "past persecution," a rebuttable presumption arises that he has a "well-founded fear of future persecution," and the burden then shifts to the Department of Homeland Security to show that the conditions in the country have changed or the alien could avoid a future threat through relocation. *Id. Mendoza*, 327 F.3d at 1287. Second, Petitioner is entitled to withholding of removal if he establishes "that it is more likely than not that he would be persecuted on account of race, religion, nationality, membership in a particular social group, or political opinion upon removal to that country." *Id.* 8 C.F.R. § 208.16(b)(2). "An alien cannot demonstrate that [he] more-likely-than-not would be persecuted on a protected ground if the [Immigration Judge] finds that the alien could avoid a future threat by relocating to another part of [his] country." See *Mendoza v. U.S. Attorney General*, 327 F.3d 1283 (11th Cir. 2003) This option was never considered when the Immigration Judge issues its decision on the matter.

The Immigration Judge failed to consider in light of *Mendoza*, whether relocating was an option available to Petitioner. It merely assumed that the relocation was an available option, but never considered the option. In fact, the Immigration Judge notes the extent of the problem with the removal of Petitioner:

> "The FARC, that's the revolutionary armed forces of Colombia, committed to filing human rights violations, *political killings*, killings of off-duty members of the

> public security forces and local officials, kidnappings, and forced air appearances, massive force displacements, infringements on citizens private rights, restrictions of freedom of movement, widespread recruitment of child soldiers, harassment, intimidation and killings or teachers and trade unionists."

In fact, the Eleventh Circuit in *Arboleda v. United States Attorney General,* 434 F.3d 1220 (11th Cir. 2006) established that since 2001, the immigration regulations have codified the country-wide requirement, and have instructed the IJ to consider whether "under all the circumstances it would be reasonable to expect the applicant [to relocate]." 8 CFR § 1208.13(b)(2)(ii); *see also* 8 CFR § 1208.13(b)(1)(i)(B). This "relocation" option was not considered by the Immigration Judge or by the Board of Immigration Appeals. The regulations identify several considerations relevant to the "reasonableness" determination, including whether the applicant would face other serious harm in the place of suggested relocation; any ongoing civil strife within the country, administrative, economic or judicial infrastructure; geographical limitations; and social and cultural constraints, such as age, gender, health, and social and familial ties. 8 CFR § 1208.13(b)(3). *See, e.g., Sepulveda,* v. U.S. Atty. Gen., 401 F.3d 1226, (11th Cir. 2005)(considering, inter alia, the large numbers of internally displaced people-and the resulting lack of access to health care, education, or employment-in concluding that relocation within Colombia was not reasonable). *See also Da Silva v. Ashcroft,* 394 F.3d 1, 8 (1st Cir.2005)("The touchstone is whether, under all the circumstances of a particular case, internal relocation is a reasonable solution."); *Mohamed v. Ashcroft,* 396 F.3d 999, 1006 (8th

Cir. 2005)("Relocation must not only be possible, it must also be reasonable."); *Gambashidze v. Ashcroft,* 381 F.3d 187, 192 (3rd Cir. 2004)("Thus the regulation envisions a two-part inquiry: whether relocation would be successful and whether it would be reasonable."); *Eduard v. Ashcroft,* 379 F.3d 182, 194 (5th Cir. 2004) (reversing and remanding to BIA for the requisite determination of whether relocation was "reasonable"). The review of the Immigration Judge, the Board of Immigration Appeals and the Eleventh Circuit Court of Appeals all failed to consider whether relocation was a viable option in Petitioner's case.

Ironically, the Immigration Judge notes that "FARC in involved in 'political killings'" which was the same reason that Petitioner fled Colombia to begin with. *Id.* Given the consideration of the evidence, this Court must be compelled to find that the INS failed to establish by a preponderance of the evidence that the Petitioners could relocate within Colombia out of the FARC's reach. *See* 8 CFR § 1208.13(b)(1)(ii) (burden of proof). Moreover, even if the BIA's conclusion that the FARC and the ELN did not function country-wide had been supported by substantial evidence, the BIA erred in failing to consider whether relocation for Petitioner was "reasonable."

The Eleventh Circuit's decision in *Sepulveda v. U.S. Att'y Gen.*, 401 F.3d 1226, 1231 (11th Cir. 2005) the BIA was required to consider not only the fact that the guerillas (ELN) exercised influence throughout the country, but also that the numbers of internally displaced people due to the civil war and the violence and the resulting scarcity of health care, education, and employment would make it unreasonable for the petitioners to relocate. *See id.*, 401 F.3d at 1232 n. 7. The BIA in this case, however, did not mention any of the other factors it should have considered

in making its determination. This is reversible error. *See Hagi-Salad v. Ashcroft,* 359 F.3d 1044, 1045 (8th Cir.2004)(remanding to the BIA for a reasonableness determination based on factors in 8 CFR § 208.13(b)(3)); *Knezevic v. Ashcroft,* 367 F.3d 1206, 1214-15 (9th Cir. 2004) (same). *See also Gambashidze v. Ashcroft,* 381 F.3d at 192 ("Thus the regulation envisions a two-part inquiry: whether relocation would be successful, and whether it would be reasonable").

Accordingly, the BIA's failure to consider all the requirements established in 8 CFR. § 203.13(b)(3), requires this Courts inherent jurisdiction and intervention.

CONCLUSION

Based on the foregoing, this Court should grant this request for a Writ of Certiorari and remand order the Court of Appeals for the Eleventh Circuit, the BIA and the Immigration Judge to address the matters of the issues filed herein.

Done this 24, day of September 2009

Respectfully submitted,

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APPENDIX – A

Slip Copy, 2009 WL 1845580 (C.A.11)
(Not Selected for publication in the Federal Reporter) (Cite as: 2009 WL 1845580 (C.A.11))
Only the Westlaw citation is currently available.
This case was not selected for publication in the Federal Reporter.

Not for Publication in West's Federal Reporter See Fed. Rule of Appellate Procedure 32.1 generally governing citation of judicial decisions issued on or after Jan. 1, 2007. See also Eleventh Circuit Rules 36-2, 36-3. (Find CTA11 Rule 36-2 and Find CTA11 Rule 36-3)

United States Court of Appeals,
Eleventh Circuit.

Jose Maria BELTRAN LOZANO, Clara Ines Belalcazar Morales, Juan Jose Beltran Belalcazar, Juan Manuel Beltran Belalcazar, Petitioners,

v.

U.S. ATTORNEY GENERAL, Respondent.

No. 08-16039
Non-Argument Calendar.
June 29, 2009.

Nicolas A. Olano, Law Office of Nicolas Olano, P.A., Miami, FL, for Petitioners.

Jessica E. Sherman, Michelle G. Latour, Colette J. Winston, David V. Bernal, USDOJ, OIL, Washington, DC, for Respondent.

Petition for Review of a Decision of the Board of Immigration Appeals. Agency Nos. A096-101-139, A096-101-140.

Before BIRCH, HULL and FAY, Circuit Judges.

PER CURIAM:

*1 Jose Maria Beltran Lozano, his wife, Clara Ines Belalcazar, and their two children, Juan Jose Beltran and Juan Manuel Beltran,[1] natives and citizens of Colombia, petition for review of the Bureau of Immigration Appeals' ("BIA's") decision affirming the Immigration Judge's ("IJ's") order finding them removable and denying their application for asylum, withholding of removal, and protection under the United Nations Convention Against Torture and Other Cruel, Inhuman, or Degrading Treatment of Punishment ("CAT"). For the reasons set forth below, we deny the petition.

I.

[1] The asylum applications of Belalcazar and the two children were derivatives of Lozano's application. Accordingly, any discussion of Lozano's claims on appeal is also applicable to Belalcazar and the children.

In October 2000, Lozano filed an application for asylum, withholding of removal under the Immigration and Nationality Act ("INA"), and protection under the CAT, asserting that he had been persecuted on account of his political opinion. The Department of Homeland Security subsequently served Lozano with a notice to appear, charging him with removability for remaining in the United States longer than permitted, pursuant to INA § 237(a)(1)(B), 8 U.S.C. § 1227(a)(1)(B).

In his asylum application, Lozano explained that he and his family were forced to leave Colombia, because members of the National Liberation Army ("ELN") persecuted them on account of Lozano's political activity with the Colombian Conservative Party. As a member of the Conservative Party, Lozano volunteered 8 to 10 hours a week, teaching adult reading and writing classes. Lozano stated that, in 1998, the ELN began infiltrating El Saladito, the town in which he lived, specifically targeting two families who were important members of the Conservative Party and forcing them to sell their property. Lozano stated that one Sunday in late July 2000, a person he had never seen before stopped by his house to deliver a note sent by a man named Jaime Garavito, one of Lozano's former students who had become a member of the ELN. The letter stated that the ELN intended to kidnap Lozano's two sons and were considering killing Lozano. After receiving the threatening letter, Lozano moved his family to the city of Cali, but he began receiving threatening phone calls from the ELN at his home and office in Cali.

Lozano appeared before the IJ with counsel and conceded removability. At the hearing, Lozano testified to the following. When Lozano and his family lived in El Saladito, Lozano volunteered on behalf of the Conservative

Party, teaching 3-hour reading and writing classes to 30 to 35 adults every Saturday.

Lozano also informed local residents about the Conservative Party's plans and campaigned for two Conservative Party candidates, one of whom unsuccessfully ran for President. The flyer Lozano received from Garavito contained a general message, stating that the ELN would kidnap or kill anyone in the area belonging to the Conservative Party, and a handwritten note, stating that he, Lozano, was included in the threats. A few days before Lozano received the flyer, a government official told local residents to stop all meeting activities, because there had been "a lot of nervousness" and "focus on official activities." In July of 2000, Lozano moved his family to the town of Cali, but after moving, he received threatening phone calls at both his home and his office, and he began sleeping at a friend's house. Lozano filed a police report after receiving the threatening calls, but he left for the United States before being asked to discuss the report with authorities.

*2 The IJ denied Lozano's application for asylum, finding that it was filed more than one year after Lozano entered the country and Lozano failed to establish changed or exceptional circumstances that would excuse the late filing. The IJ found Lozano's testimony to be credible and determined that the threats contained in the flyer were motivated at least in part by Lozano's political activities. However, the IJ found that the threats in the flyer and the threats received via telephone did not rise to the level of persecution. It found that Lozano also failed to establish that he, more likely than not, would be subject to persecution upon returning to Colombia, because Lozano and his family had been outside the country since 2000 and

did not possess such notoriety that, upon returning, they would be sought out or persecuted by the ELN.

The BIA upheld the IJ's decision, finding that Lozano's claim for asylum was untimely and the threatening flyer and phone calls from the guerillas did not rise to the level of persecution. It noted that

Lozano had been away from Colombia for over eight years and failed to show that he was still active in the Conservative Party or would conduct himself in a way that would attract the attention of

the guerillas. For these reasons, the BIA denied Lozano's claim for withholding of removal and for CAT relief.

II.

We review only the BIA's decision, except to the extent that the BIA expressly adopts the IJ's opinion or reasoning. *Al Najjar v. Ashcroft,* 257 F.3d 1262, 1283-84 (11th Cir.2001). Here, the BIA did not expressly adopt the IJ's order, so we review the BIA's order. When considering a petition to review a BIA final order, we review legal issues *de novo.Hernandez v. U.S. Att'y Gen.,* 513 F.3d 1336, 1339 (11th Cir.2008). The BIA's factual findings are reviewed under the substantial evidence test. *Al Najjar,* 257 F.3d at 1283-84. Under this test, we must affirm the BIA's decision if it is "supported by reasonable, substantial, and probative evidence on the record considered as a whole." *Id.* at 1284. "To reverse a factual finding by the BIA, [we] must find not only that the evidence supports a contrary conclusion, but that it compels one." *Farquharson v. U.S. Att'y Gen.,* 246 F.3d 1317, 1320 (11th

Cir.2001).

Under the INA, an alien shall not be removed to his country of origin if his life or freedom would be threatened in that country on account of race, religion, nationality,

membership in a particular social group, or political opinion. INA § 241(b)(3), 8 U.S.C. § 1231(b)(3). "The alien bears the burden of demonstrating that it is more likely than not [that] []he will be persecuted or tortured upon being returned to h[is] country." *Sepulveda v. U.S. Att'yGen.*, 401 F.3d 1226, 1232 (11th Cir.2005) (internal quotations omitted). An alien applying for withholding of removal may satisfy his burden of proof in two ways. *Tan v. U.S. Att'y Gen.*, 446 F.3d 1369, 1375 (11th Cir.2006). "First, an alien may establish 'past persecution in [his] country based on a protected ground.' " *Id.* Second, if the alien does not establish past persecution, he bears the burden of showing that it is more likely than not that (1) he would be persecuted in the future on account of one of the five enumerated grounds; and (2) he could not avoid this future threat to his life or freedom by relocating, if under all the circumstances it would be reasonable to expect relocation. *Id.*, citing 8 C.F.R. § 208.16(b)(2); *see also Mendoza v. U.S.Att'y Gen.*, 327 F.3d 1283, 1287 (11th Cir.2003) (holding that an alien who has not established past persecution may still be entitled to withholding of removal if he can demonstrate a future threat to his life or freedom on a protected ground).

*3 Neither the INA nor the regulations define "persecution," but we have indicated that "persecution is an extreme concept, requiring more than a few isolated incidents of verbal harassment or intimidation ... [m]ere harassment does not amount to persecution." *Sepulveda*, 401 F.3d at 1231 (internal quotations omitted). "Not all exceptional treatment is persecution." *Gonzalez v. Reno*, 212 F.3d 1338, 1355 (11th Cir.2000). For example, menacing telephone threats do not rise to the level of past persecution. *Sepulveda*, 401 F.3d at 1231.

III.

As an initial matter, Lozano, in his brief before this Court, offers no argument regarding his claims for asylum and CAT relief. Accordingly, he has abandoned these issues and we will address only the BIA's denial of withholding of removal. *See id.* at 1228 n. 2 (noting that "[w]hen an appellant fails to offer argument on an issue, that issue is abandoned"). Lozano concedes that he had not established past persecution; thus, he has also abandoned any claim of past persecution and the only question we must address is whether Lozano, more likely than not, would be persecuted in the future on account of his political opinion. *See id.*, 8 C.F.R. § 208.16(b)(2).

Lozano has failed to show that it is more likely than not that he would be persecuted upon returning to Colombia. First, Lozano never indicates, in his written statement or his testimony before the IJ, that he is still involved in politics or intends to resume his political activities in the future. Furthermore, Lozano has been living outside of Colombia for over eight years. Although Lozano was active in politics when he lived in Colombia, he did not act as a party leader or organizer, but instead volunteered as a reading and writing teacher, and distributed information to locals about the Conservative Party. Based on these facts, it does not appear that Lozano was such an important figure in the Conservative Party that he would be singled out by the ELN upon his return to Colombia eight years after he left. Lozano provided no evidence that the ELN continued to search for him after he departed the country. Moreover, as noted above, Lozano concedes that the harassment he suffered while in Colombia did not rise to the level of persecution, and he offers no explanation as to why the ELN's actions against him would escalate upon his return.

Because Lozano has failed to show that he, more likely than not, would be persecuted upon returning to Colombia, the issue of relocation is irrelevant. *See* 8 C.F.R. § 208.16(b)(2). Accordingly, we deny his petition for review.

PETITION DENIED.

C.A.11, 2009.
Beltran Lozano v. U.S. Attorney General
Slip Copy, 2009 WL 1845580 (C.A.11)

END OF DOCUMENT

APPENDIX – B

U.S. Department of Justice
Executive Office for of Immigration Review

Decision of the Board of Immigration Appeals

Falls Church, Va 2204

Files: A096 101 139 - Miami, FL
A096 101 140
A096 101 141
A096 101 142

IN RE: JOSÉ MARIA BELTRAN LOZANO
CLARA INEZ BELALCAZAR MORALIS
JUAN JOSÉ BELTRAN BELALCAZAR
JUAN MANUEL BELTRAN BELALCAZAR

IN REMOVAL PROCEEDINGS
APPEAL

ON BEHALF OF RESPONDENTS:
Julian Montaro, Esq.

The respondents have appealed the immigration judge's decision of June 19, 2007. The appeal will be dismissed.

The respondents are natives and citizens of Columbia. The adult male is the lead respondent, and his wife and two

children claim relief on a derivative basis on his application for relief. We find no error in the determination that the lead respondent is inelligible for asylum because of his failure to demonstrate that he file dan asylum claim within one year of arrival. *See* Section 208(a)(2)(B) of the Immigration and Nationality Act, 8 USC § 1158(a)(2)(B). The lead respondent also failed to demonstrate changed circumstances affecting his eligibility or extraordinary circumstances relating to the delay in filing an application within one year. Regarding the eligibility for withholding of removal and protection under the Convention Against Torture (CAT), we find no clear error in the immigration judge's finding of fact regarding the lead respondent's past experiences in Columbia. See 8 C.F.R. Section 1003.1(b)(3)(1). The Board may not reverse an immigration judge's fact finding unless we determine that the immigration Judie committed clear error. *See Matter of S-H,* 23 I&N Dec. 462, 464-65 (BIA 2002). We also agree that the lead respondent failed in his burden of proof to show eligibility for withholding of removal and CAT protection. The lead respondent essentially claims that he will be persecuted or killed by guerillas in Columbia, on account of his political activities. The lead respondent was reportedly a member of the conservative party and was active in elections and conducting a literacy school for local youth, which was funded by his political party. As a result, the lead respondent testified (TR. at 35-37) that he received a threatening document from the guerillas and was later the object of threatening telephone calls. We agree with the immigration judge that these threats do not rise to the level of past persecution, and that the respondent and his family members were never physically harmed. (TR. at 36) Allegedly (TR. at 33), the former student of the lead respondent had joined the guerrilla and had sent the

threatening pamphlet or document to the lead respondent, whose activities and location would have been known or at least discoverable. It is reasonable to concluye that, had the guerrilla decided to act upon their threat, they would have had the opportunity to do so prior to the lead respondent's departure from Columbia. The respondents have been gone from Columbia for over eight years, and there is no evidence that the lead respondent has remained active in his party and has conducted himself in a manner which would draw the continued attention of the guerillas in his native country. The threshold issue in regard to withholding eligibility is whether or not the lead respondent's life or freedom will be threatened in Columbia on account of his race, religion, political opinion, nationality, or membership in a particular social group. We agree with the immigration judge that there has been no showing of withholding eligibility in this case. Further, since the lead respondent has not shown that, more than likely not, the Columbian government will torture him or would acquiesce his torture by others, there is also no showing of eligibility for CAT protection.

Accordingly, the following order will be entered.

ORDER: The appeal is dismissed.

/s Thomas G. Snow
FOR THE BOARD

APPENDIX - C

U.S. DEPARETMENT OF JUSTICE
EXECUTIVE OFFICE FOR THE
IMMIGRATION REVIEW
IMMIGRATION COURT

Miami, Florida

Date: June 19, 2007

File A 96 101 139
A 96 101 149
A 96 101 141
A 96 101 142

In the Matter of

JOSE MARIA BELTRAN LOSADO)
CLARE BELALCAZAR)
JUAN JOSE BELTRAN BELALCAZAR)
JUAN MANUEL BELTRAN BELALCAZAR)

Respondent

IN REMOVAL PROCEEDINGS

CHARGE: Removal Section 237(a)(1)(B) of the Immigration and Nationality Act. Respondents after admission as non-

immigrants under Section 101(a)(15) of the Act, having remained in the United States for a longer time than permitted. That charge applies to all four respondents.

APPLICATION: Section 208 of the Immigration and Nationality Act of Asylum, Section 241(b)(3) of the Immigration and Nationality Act Withholding of Removal, Article III of the Convention Against Torture, Withholding of Removal

APPERANCES:

ON BEHALF OF RESPONDENT:	ON BEHALF OF HOMELAND SECURITY:
Julian Montero, Esq.	John Barker, Esq.

ORAL DECISION OF THE IMMIGRATION JUDGE

The case appeared before the Court and this Court has jurisdiction over these matters with the Department of Homeland Security having filed a Notice of Appear in reference to all four Respondents. The Notice to Appear, in each case, has been marked and received as Exhibit # 1.

The Respondents, through counsel, have admitted to the truth of the allegations and have conceded to being subject to removal. That is, that they are not citizens or nationals of the United States, but that they are natives and citizens of the country of Colombia.

All four respondents entered the United States, Miami, Florida, September the 10th of the year 2000 as non-immigrants. They were authorized to remain in this country until March the 9th of 2001 and have remained in this country beyond that date without the permission of the United States government. It is clear, therefore, based upon that plea and these facts, that the Respondents have acted in violation of Section 237(a)(1)(B) of the Act and are subject to removal as charged. The issue of removal is not in dispute. What is the issue within this opinion is whether or not the Respondents are entitled to any relief from removal. In that regard, the Respondents have filed an application for asylum. That application filed in the name of the adult male, the father of this family unit, Jose Maria Beltran received as Exhibit # 2. The application filed, initially with the Department, October the 17th, 2002 and forwarded to the Court along with the Notice to Appear to be considered within this removal proceeding. Having received those documents and the attachments there too, the Court had also received an additional filing made by Respondent's counsel concerning documentation submitted through the filing of July 17th, 2006.

Those documents received into the record as Exhibit # 3, communal action committee document, a report from the station of police in El Saladito and a complaint with the attorney's office, all within the country of Colombia.

Further the court did receive background information concerning country conditions in the country of Colombia through the country reports on human rights practices for 2006 prepared by the State Department of the United States regarding Colombia. The lead Respondent was called to the stand to testify, again, Jose Maria Beltran. He was the only individual called to the stand to testify.

Based upon review of all the evidence, the Court finds, first of all, that the Respondent has filed the application for asylum outside the one year period as required under Section 208 of the Immigration and Nationality Act. As indicated, the Respondent entered this country on September the 10th of 2000. He was authorized to remain in the United States until March 9th 2001.

Even if the Court, and the Court does not, but even if the Court were to begin the commencement of the one year period, March the 9th of 2001, we see with the Respondent having filed the application for asylum. And he filed the application October 17th of 2002. Filed the application beyond the one year period from that time. Respondent has offered as some reasoning or rational concerning the late filing. He mentions the death of his father here in the United States in April the 26th of 2001.

The Court considering that reviews the record as to whether or not the Respondent had filed the application within a reasonable period of time subsequent to that occasion. And I would find that he did not having filed the application, again, over a one year period from that date far beyond what the Court would consider to be a reasonable period of time.

Respondent also offered in this testimony that he waited to file the application due to a lack of knowledge. The Court has examined the record and examined the law as to whether or not the Respondent through this information and his statement has created either change or exceptional circumstances for the consideration of the application, even though it has been filed outside the one year period. And the Court finds, based upon the record before us.

That the Respondent has failed to establish either changed or exceptional circumstances for the consideration of the relief under Section 208 of the Act. And therefore, the Court finds that the Respondent, based upon the untimely filing of the application as required under Section 208 of the Act and having failed to establish either changed or exceptional circumstances, that the Respondents and all four Respondent are considered within this one application as a family unit that they have failed to establish eligibility for consideration of relief under Section 208 of the Act of asylum. The Court will focus its attention, however, on other relief that is available to the Respondents within this same application.

They are entitled to consideration of witholding of removal under the same application for asylum which provided for under Section 241(b)(3) of the Act. To establish eligibility for that relief, the Respondents must show a clear probability that their life or freedom would be threatened in their country.

In this, Colombia, on account of the race religion, nationality, membership in a part of a social group or political opinion. In the case of INS v. Stevic, 467 U.S. 407 1984, the case that appears to remain controlling within this removal proceeding. It requires that the Respondent's facts must establish that it is more likely than not that they would be subject to persecution for one of the grounds specified.

Also under this same application, the Court does consider relief in the form of withholding removal under Article III of the convention against torture. To be eligible for that relief, the Respondents must establish that it is more likely than not that they would be tortured if returned to their country. And that they must show that the torture would be done, by or with acquiescence of government official.

The male Respondent having been called to the stand to testify and having reviewed the information provided within the pertinent exhibits, the Court finds as follows: that the lead Respondent, date of birth May 10 of 1983.

He is approximately 54 years of age. He is married to the Co-Respondent, Clare Belalcazar. They were married in 1979. She wan born in Colombia January 20, 1955. She is approximately 52 years of age. They have two children, Juan Jose born in 1988 and Juan Miguel born in 1992. All came to the United States as I've indicated at the same time the year 2000. The Respondent is a relatively well educated individual, attending schooling at the university or college level for some three years studying business administration.

Thereafter, he and, apparently his wife were in business taking care of residential properties supporting themselves, and apparently, doing well financially.

In 1997, they departed their work in Cali and took up residents in an area, a short way, outside Cali. It's described to us as an ideal or beautiful setting. We a property referred to as a country place that the Respondent had inherited from his father, located in the town of El Saladito. The Respondent tells us that while in that location, he continued his involvement as an activist with the Conservative Party. He tells us that he was a member of the Conservative Party since 1980. And in 1997, carried on with his activities, teaching some 35 individuals or so at the literacy program within the country of Colombia. We are told that the writing materials and such were supplied through funds provided y [sic] the Conservative Party.

Respondent tell us that in that local, that the organization, described to us as the National Liberation Army, known under the acronym ELN, was active in that area.

We were told through the background information, Exhibit # 4 at paragraph one and page one, that a 42 year internal armed conflict has continued and does continue between the Government and terrorist organizations.

And the National Liberation Army, ELN is mentioned specifically in this regard. We are told on that same page, that this organization along with another Guerilla organization referred to as the FARC, that's the revolutionary armed forces of Colombia, committed to filing human rights violations, political killings, killings of off-duty members of the public security forces and local officials, kidnappings, and forced air appearances, massive force displacements, infringements on citizens private rights, restrictions of freedom of movement, widespread recruitment of child soldiers, harassment, intimidation and killings or teachers and trade unionists.

The Respondent, the Court would find, has testified consistent with that information. I would state, at this point, that having reviewed the Respondent's application in detail, having reviewed the documents submitted in support of his application and having listened carefully to the Respondent's testimony, I would find that the Respondent is a credible individual.

The Respondent has described to us his political activities involved, such as being actively involved in a polling booth providing individuals with not only location, times and also the policy of the Conservative Party during the election process. The Court finds, as I've stated previously, that the Respondent is credible in this regard as well. The Respondent tells us of a building and a concern in regard to the security situation and reference to the Guerilla organization, ELN, 1998 and 1999, in the year in which he and his family were residing.

He takes our attention specifically to June 2000. Respondent states that he was sent a flyer by a member of the ELN. Respondent specifically refers to the student, Jaime Garavito, who had been one of his students some months earlier and Respondent believes that he was a member of the ELN. And that this message was sent to the Respondent by another courier and the message contained, not only a threat to members of the Conservative Party generally, but also specifically to the Respondent and his family.

Respondent tells us that within this note or flyer as he explained to us, a handwritten note was provided referencing the respondent and his family specifically threatening with their life if they did not discontinue their activities. The court would find that these threats were directed not only apparently to those individuals who were not in alignment with the Guerilla Forces, but the court would find that there is sufficient evidence to indicate that these threats were motivated at least in part by respondent's political activities within the area in which he was residing with his family and had been residing since 1997. As a result of that threat, respondent and his family departed the area, returned to Cali to live in the residence or one of the residences of which he managed previously. Respondent tells us that while at the location, telephone threats were received and what he believed were members of the ELN organization. Again, threatening not only himself, but the members of his immediate family with the taking of their lives. He tells us that these threats occurred not only at his home, but at place of business, and that because of this, he had to change his telephone number and also to relocate. This is evidenced by the supporting documentation received in Exhibit #3 as well.

As a result of the situation, respondent felt it necessary and did depart with his family from the country of Columbia entering, as I have indicated, with the use of a United States visa in September of 2000. And respondent states that it is because of those threats that he cannot return to Columbia at this time. And he feels that because of the network of guerilla forces that he cannot relocate to any other area of the country of Columbia.

The question remains, therefore, as to whether or not the respondent has established as required under Section 241(b)(3) of the Act as to whether or not it is more likely than not that the respondents will be subject to persecution on one of the grounds specified. If we are to assume for the purpose of this decision that the grounds specified is because of respondent's political opinion, then we must study the case as to whether or not the respondent will be subject to persecution. The 11th Circuit Court of Appeals has been very helpful in most recent cases to assist the court in determining what it meant by the term persecution. In the case decided by the court in March 2, 2005, Sepulveda v. United States Attorney General at 41 F.3d 1226, that also involved individuals from the country of Columbia who were seeking asylum here in the United States. The court, in that case, looking at the term persecution, tells us that it is an extreme concept requiring more than a few isolated incidents of verbal harassment or intimidation. They go on to mention specifically telephone threats and they did find that, in and of itself, does not rise to the level of persecution. Further, the 11th Circuit Court of Appeals has addressed this problem in the case of Silva v. United States Attorney General at 448 F.3d 1229 and decided by the court May 5, 2006.

In that case, they speak specifically to a condolence note indicating that the respondent should rest in peace for doing what she should not be doing, again, an individual of the country of Columbia. The court held that this was in the nature of mere harassment or intimidation and did not rise to the level of past persecution.

The court equates that the condolence note referenced in that case to the flyer that the respondent has stated that he [sic] received as well. Therefore, the court finds that based upon the rationale set forth by the 11th Circuit that those incidences taken individually do not rise to the level of persecution. And the court also considering that in aggregate, finds that they do not rise to the level of persecution. And therefore, it is clear on the record before us that the respondents have not been persecuted in the past. And the court would find that even though these guerilla organizations continue to exist in the country of Columbia, that the respondents have been outside the country now since the year 2000, September of 2000, six plus years. These individuals do not seem to possess such notoriety that if returned to the country of Columbia that they would [be] [sic] sought out or persecuted by the guerilla forces. And therefore, the respondents, based upon the record before us, have not established that it is more likely than not that they would be subject to persecution on account of their political opinion or any other foregrounds to be considered within withholding under Section 241(b)(3) of the Act.

Turning our attention to relief under withholding of removal under Article III of the Convention Against Torture, that relief is to be considered and referenced to the individuals who fear torture from individuals associated or are somehow aligned with government structure within Columbia. It is not the case in this incidence.

The respondents are telling us that they fear persecution or possible torture from individuals whose goal it is to overthrow the government of Columbia. In this case the guerilla organization ELN. And because of that, the factual pattern presented to the court, the court finds that the facts of this case do not fall within the definition of torture is understood within Article III of the Convention Against Torture and as such, the court denies that relief to these individuals citing to the Board's case in Matter of S-V in that regard.

So it is hereby the decision and order of the court that the respondents for the four mentioned reasons be denied relief under Section 208 of the Act of Asylum.

IT IS FURTHER ORDERED that the respondents be denied relief under Section 241(b)(3) of the Act withholding of removal.

IT IS FURTHER ORDERED that the respondents be denied relief under Article III of the Convention Against Torture withholding of removal.

The respondents are not seeking any other relief from the court. And with the respondents having been found to be subject to removal as charged under the notice to appear, it is ordered that the respondents be ordered removed from the United States to Columbia.

Michael C. Horn
Immigration Judge

A 96 101 1639, et al June 19, 2007

APPENDIX - D

IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130-1904

In the Matter of: Case No: A96-101-139

BELTRAN, LOZANO, JOSE MARIA
Respondent

IN REMOVAL PROCEEDINGS

This is a summary of the oral decision entered on June 19, 2009.

This Memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The Respondent was ordered removed from the United States to Colombia or in the alternate to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternate to _____.

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount $_____ with the alternate order of removal to_____.

Respondent's application for:

[x] Asylum was ( ) granted (x) denied ( ) withdrawan

[x] Witholding of removal was ( ) granted (x) denied ( ) withdwrawn.

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn.

[ ] Cancelation under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

[ ] Cancelation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancelation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Respondent's application of (x) withholding of removal ( ) deferral of removal under Article III of the Convention Against Torture was ( ) granted (x) denied ( ) withdrawn.

[ ] Respondent's status was rescinded under section 246.

[ ] Respondent is admitted into the United States as a _____ until _____.

[ ] As a condition of admission, respondent is to post a $_____ bond.

[ ] Respondent knowingly filed a frivolous asylum application after proper notice.

[ ] Respondent was advised of the limitation in discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date June 19, 2007

s/ Michael C. Horn
Michael C. Horn
Immigration Judge

Appeal: Waived [Reserved] Appeal Due By:

July 19, 2007

ALIEN NUMBER: 96-101-139

ALIEN NAME: BELTRAN, LOZANO, JOSE MARIA

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) TO: [ ] ALIEN c/o Custodial Officer [x] ALIEN'S ATT/REP [x] INS DATE: 06/19/07 BY: COURT STAFF: s/ Michael C. Horn Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130-1904

In the Matter of: Case No: A96-101-141

BELTRAN BELALCAZAR, JUAN JOSE
Respondent

IN REMOVAL PROCEEDINGS

This is a summary of the oral decision entered on June 19, 2009.

This Memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The Respondent was ordered removed from the United States to Colombia or in the alternate to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternate to _____.

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Respondent's application for:

[x] Asylum was ( ) granted (x) denied ( ) withdrawan

[x] Witholding of removal was ( ) granted (x) denied ( ) withdwrawn.

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn.

[ ] Cancelation under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

[ ] Cancelation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancelation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

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[ ] Proceedings were terminated.

[ ] Other: _____

Date June 19, 2007

s/ Michael C. Horn
Michael C. Horn
Immigration Judge

Appeal: Waived [Reserved] Appeal Due By:

July 19, 2007

ALIEN NUMBER: 96-101-141

ALIEN NAME: BELTRAN BELALCAZAR, JUAN JOSE

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) TO: [ ] ALIEN c/o Custodial Officer [x] ALIEN'S ATT/REP [x] INS

DATE: 06/19/07 BY: COURT STAFF: s/ Michael C. Horn Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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A-30

IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130-1904

In the Matter of: Case No: A96-101-140

BELALCAZAR MORALES, CLARA INEZ
Respondent

IN REMOVAL PROCEEDINGS

This is a summary of the oral decision entered on June 19, 2009.

This Memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The Respondent was ordered removed from the United States to Colombia or in the alternate to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternate to _____.

[ ] Respondent's application for voluntary departure was granted until upon posting a bond in the amount $_____ with the alternate order of removal to_____.

Respondent's application for:

[x] Asylum was ( ) granted (x) denied ( ) withdrawan

[x] Witholding of removal was ( ) granted (x) denied ( ) withdwrawn.

[ ] A Waiver under Section _____ was ( ) granted ( ) denied ( ) withdrawn.

[ ] Cancelation under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

[ ] Cancelation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Cancelation under Section 240A(b)(2) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

[ ] Adjustment of Status under Section _____ was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

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[ ] Respondent was advised of the limitation in discretionary relief for failure to appear as ordered in the Immigration Judge's oral decision.

[ ] Proceedings were terminated.

[ ] Other: _____

Date June 19, 2007

s/ Michael C. Horn
Michael C. Horn
Immigration Judge

Appeal: Waived [Reserved] Appeal Due By:

July 19, 2007

ALIEN NUMBER: 96-101-140

ALIEN NAME: BELALCAZAR MORALES, CLARA I

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) TO: [ ] ALIEN c/o Custodial Officer [x] ALIEN'S ATT/REP [x] INS

DATE: 06/19/07 BY: COURT STAFF: s/ Michael C. Horn Attachments: [ ] EOIR-33 [ ] EOIR-28 [ ] Legal Services List [ ] Other

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IMMIGRATION COURT
333 SOUTH MIAMI AVE., STE. 700
MIAMI, FL 33130-1904

In the Matter of: Case No: A96-101-142

BELTRAN, LOZANO, JUAN MANUEL
Respondent

IN REMOVAL PROCEEDINGS

This is a summary of the oral decision entered on June 19, 2009.

This Memorandum is solely for the convenience of the parties. If the proceedings should be appealed or reopened, the oral decision will become the official opinion in the case.

[x] The Respondent was ordered removed from the United States to Colombia or in the alternate to

[ ] Respondent's application for voluntary departure was denied and respondent was ordered removed to _____ or in the alternate to _____.

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[x] Asylum was ( ) granted (x) denied ( ) withdrawan

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[ ] Cancelation under Section 240A(a) was ( ) granted ( ) denied ( ) withdrawn.

Respondent's application for:

[ ] Cancelation under Section 240A(b)(1) was ( ) granted ( ) denied ( ) withdrawn. If granted it is ordered that the respondent be issued all appropriated documents necessary to give effect to this order.

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Date June 19, 2007

s/ Michael C. Horn
Michael C. Horn
Immigration Judge

Appeal: Waived [Reserved] Appeal Due By:

July 19, 2007

ALIEN NUMBER: 96-101-142

ALIEN NAME: BELTRAN, LOZANO, JUAN MANUEL

CERTIFICATE OF SERVICE

THIS DOCUMENT WAS SERVED BY: MAIL (M) PERSONAL SERVICE (P) TO: [ ] ALIEN c/o Custodial Officer [x] ALIEN'S ATT/REP [x] INS

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